IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2765 of 2005

Amol Ramesh Gharge Patil ..Petitioenr

V/s

abhyudaya Co Op Bank Ltd.. Respondents

Ms Rita Bhatia for Petitioner

K.B.Adyanthage for Respondents

CORAM:S.A.BOBDE,J.

DATED:18th July 2005

P.C.:-

1. Rule, rule returnable forthwith. Heard by consent.

2. The Petitioner has challenged an order of the Maharashtra State, Cooperative Appellate court, Mumbai modifying the order of the trial Court and the Appellate Court has directed the Respondent bank to release the vehicles of the Petitioners upon the Petitioner depositing 10% of the outstanding dues which is approximately Rs.10 lacs as on 1-7-2004. The amount outstanding is said to be about Rs.1,13,45,545/-. The Petitioner appears to have borrowed money from Respondent bank for purchasing of certain machinery and vehicles in

question. Apparently the Petitioner paid back most of the amount but a large amount appears to be still outstanding. Initially the Petitioner approached to this Court against the notice issued by the Bank by way of Writ Petition No.1098/2003. This Court appointed the Court Receiver and directed the Petitioner to pay a sum of 70% of the amount which would be received by the Petitioner for the work done that was expected. This petition, however, came to be witdhrawn by the Petitioners as a result of which admittedly Receiver was discharged.

3. Thereafter the Petitioner approached the Co operative Court at Raigad-Alibag challenging the releasing of vehicles and sell of certain machinery belonging to the Petitioner. The Co operative Court passed an order dated 17-7-2004 directing the Petitioner to pay the entire dues of the Respondent bank within a period of 6 months and simultaneously directed the Respondent bank to release all the vehicles and machineries.

4. Aggrieved by the above order the Petitioner has challenged it before the Co operative Appellate court. The Co operative Appellate Court has modified the impugned order by directing the Bank to release the vehicles subject to the Petitioner paying Rs.10 lacs of the outstanding dues on 1-7-2004. This is about 10% of the aforesaid sum of Rs.1,13,45,545/- allegedly outstanding against the Petitioner. Having regard to the

extent dues outstanding, I see no infirmity jurisdictional or otherwise in the order of Co operative Appellate court. The learned Counsel for the Petitioners contended that the Petitioner must be entitled to use of the vehicles since they are necessary for completion of contract undertaken by the Petitioner. In fact this is precisely what has been done by the Appellate court, it has directed the Respondent bank to release all vehicles forthwith. There is nothing prima facie unreasonable in directing the Petitioner to deposit 10% of outstanding dues.

5. In this view of the matter I see no infirmity in the impugned order. Petition is dismissed.

(S.A.BOBDE,J.)